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Jesup, Morris Ketchum

Correspondence regarding  
the bill to amend the...

New York


1900

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Jessup, M. K.

## CORRESPONDENCE

Regarding the bill to amend the Charities Act of 1896  
with reference to the powers of the State  
Board of Charities.

44 PINE ST., NEW YORK,  
March 10, 1900.

Hon. EDGAR T. BRACKETT,  
Chairman Senate Judiciary Committee.

Hon. ROBERT J. FISH,  
Chairman Assembly Judiciary Committee.

DEAR SIRs:

I desire to write in earnest support of the bill to amend the Charities Act of 1896, favorably reported in both houses, as a substitute for the bill originally introduced by you.

A few words in explanation of the origin of this bill, although unnecessary for your own information, may perhaps be useful to others.

On February 26th Messrs. J. Pierpont Morgan, Charles Stewart Smith, Alexander E. Orr, Jacob H. Schiff, and Rev. Dr. Morgan Dix and I, wrote a letter to Governor Roosevelt explaining that under the Charities Act of 1896, as interpreted by the Court of Appeals in the Gerry case, the law defining the powers of the State Board of Charities over private charities was left in a very unsatisfactory condition. We pointed out that with respect to private charities receiving any public moneys, the Act of 1896 gave to the State Board powers of actual control of so extensive a nature that, if the Board should hereafter be composed of unworthy men,

they might from improper motives wrest the actual management of such charities from the persons to whom such management had been entrusted by their founders. We also asserted that this condition of affairs was liable to divert from our charities vast sums of money which they would otherwise receive. And after further calling attention to the fact that under the decision referred to, it was probable that the State Board had no power to make even a proper inspection of private charities which receive no public assistance, we most earnestly represented to the Governor that it was essential both in the interest of the State, as represented by the State Board, and the various private charities, that the law should be amended in certain particulars indicated by us. I send you herewith a copy of the letter so referred to.

From this letter there resulted a conference attended by gentlemen interested in many private charities, at which Messrs. John L. Cadwalader and Lewis L. Delafield were requested to take the entire subject in hand, and to endeavor to bring about an amendment of the law upon the general lines thus indicated.

Messrs. Cadwalader and Delafield at once entered upon a series of conferences with the State Board of Charities and the State Charities Aid Association, and, as the result of these conferences, the bill above referred to was unanimously agreed upon. I beg to hand you herewith a copy of a letter from Messrs. Cadwalader and Delafield in which they refer more in detail to the result of these conferences.

I now desire to express to you, in behalf of the group of gentlemen above named, the earnest hope that the bill above referred to may be enacted.

We believe that the plan devised by this bill is a reasonable and fair adjustment of the questions which have arisen between the State Board and the charities with which we are connected; and that, while reserving to the State, as represented by the State Board, a sufficient power of inspection over private charities, and the right to ascertain the manner in which all public funds are

dealt with, it removes all possibility of danger that the State Board may at some future time endeavor to wrest from the trustees and managers of the private charities that full measure of discretion and control with which they have been entrusted by the founders of such institutions. And we also believe that the enactment of this bill will remove many doubts and uncertainties, and a certain friction which has heretofore existed between the State Board and the private charities, the existence of which has been harmful both to the State Board and the numerous charities in this State. I am, sirs,

Yours very respectfully,

MORRIS K. JESUP.

(Copies of the letters referred to in the foregoing communication to Senator Brackett and Mr. Fish, and of other letters bearing upon the same question are annexed hereto.)

44 PINE STREET, NEW YORK.

February 26, 1900.

HON. THEODORE ROOSEVELT,  
Governor of the State of New York.

DEAR SIR:—

As private citizens interested in various charitable works in the State, and actuated solely by public motives, we respectfully call your attention to the highly unsatisfactory relations now existing between the State Board of Charities and the various charitable corporations or associations over which it assumes to exercise jurisdiction. It is unfortunately true that the State Board of Charities has assumed large and dangerous powers, which the courts have found it did not possess and ought not to possess—that the charitable corporations and their members and managers have cause to complain of their unauthorized and arbitrary treatment—and that serious

differences have arisen between the charitable minded public and the officials of the State Board.

Prior to the adoption of the Charities Article of the new Constitution and in the year 1867, the State by the passage of the act known as Chapter 951 of the laws of 1867, established the State Board of Charities, asserted the propriety of an inspection by State officers of the charitable institutions of the State and the taking of appropriate proceedings to remedy abuses by the courts.

Section 4 of this act permitted the State Board "to look into and examine the condition of the several institutions which they may be authorized by this act to visit."

The act of May 21, 1873, known as Chapter 571 of the laws of 1873, provided as follows: "The said board or any one or more of said Commissioners are hereby authorized whenever they may deem it expedient to visit and inspect any charitable, eleemosynary, correctional or reformatory institutions in this State excepting prisons, whether receiving State aid or maintained by municipalities or otherwise," and by Section 5, if in the opinion of the Board, or any three members thereof, any matter in regard to the management requires legal investigation, notice was to be given to the Attorney-General and forthwith an inquiry was to be ordered.

In 1889 a separate act was passed organizing the State Commission in Lunacy, and the Commissioners thereby created were empowered "to look into and examine" the condition of asylums, &c. The prisons of the State, however, were without any inspection provided by law.

The Constitutional Convention, moved thereto by the State Charities Aid Association, separated charity, lunacy and correction, and provided for separate boards, and the Charities Article of the new Constitution provided as follows:

Article 8, Section 11.—"The legislature shall provide for a State Board of Charities which shall visit and inspect all institutions, whether State, county, municipal, incorporated or unincorporated, which are of a charit-

"able, eleemosynary, correctional or reformatory character."

One of the most active and competent of the members of the State Charities Aid Association, in a published report dated November 17, 1894, speaking of the result of their labors, says: "As the power granted by the Constitution to these supervisory boards is *that of inspection alone*, leaving with the Legislature the right to confer additional powers and to determine all details of organization and membership, no autocratic authority need be feared by the institutions."

What was advised by the State Charities Aid Association and aimed at by the passage of the constitutional amendment was to secure to the Board the right to "look into and examine" as it had formerly existed, to report abuses to the proper State authorities through the Attorney-General, leaving it to the properly constituted authorities of the State to take legal steps after proper hearing when the adoption of that course was necessary.

The Act of 1896, Chapter 546 of the laws of 1896, incorporates the State Board of Charities.

Section 2 of the act contains a definition of a State charitable institution as used in the act, and provides as follows: "The term State charitable institutions \* \* \* shall include all institutions of a charitable, eleemosynary, correctional or reformatory character, supported in whole or in part by the state, except institutions for the instruction of the deaf and dumb and blind, and such institutions which, by section eleven, article eight of the constitution, are made subject to the visitation and inspection of the commission in lunacy or the prison commission, whether managed or controlled by the state or by private corporations, societies or associations."

By Section 9 the State Board is authorized to "visit, inspect and maintain a general supervision over all charitable," &c., institutions, in great detail, including "to advise the officers of such institutions in the performance

" of their official duties," and by Section 10 all institutions of a charitable character or design \* \* \* and all asylums, hospitals and institutions "are subject to the *visitation, inspection and supervision* of the State Board of Charities, its members, officers and *inspectors*."

By Section 11, among the objects to be ascertained are

(4.) "Whether the objects of the institution are being accomplished."

(5.) "Whether the laws and rules and regulations of the board in regard to it are fully complied with."

(6.) "The methods of industrial, educational and moral training, if any, and whether the same are best adapted to its inmates."

(7.) "The methods of government and discipline of its inmates."

(8.) The qualifications and general conduct of its officers and employees."

By Section 13: If as the result of any investigation it appears that the inmates are cruelly, negligently or improperly treated or that inadequate provision is made for them, or that any other condition necessary to their well being is violated the Board may issue an order in the name of the people, under its official seal, directed to the proper officers or management, "requiring them to modify such treatment or apply such remedy or both as shall therein be specified." To that section there is, indeed added a qualification requiring the approval of the order by the Supreme Court, but so worded that under it the function of the Court is merely to act as the registrar of the will of the State Board.

By Section 14 it is provided that the Board shall call the attention of the Trustees, &c., to any abuses, defects or evils which shall be found therein, and such officers shall take steps with a view to correcting the same *in accordance with the advice of the Board*; and by Section 15, if

in the opinion of the Board or any three members thereof any matter in regard to the management requires *legal investigation then* the Attorney-General shall proceed.

Now remembering that the original act of 1873 permitted the *Board* or *any of its members* to inspect a charity, and that the constitutional amendment continued this and gave the Board the power to visit and inspect, and remembering that the report above referred to stated specifically that the entire power was limited "to inspection alone"—we may well suggest whether "undue autocratic authority need be feared by these institutions."

Certainly great tact and forbearance was necessary if any such powers were to be exercised, even if they were to be exercised by the Commissioners in person. Under this limited power granted by the Constitution consider the authority assumed by the State Board of Charities under the authority of a law enacted to interpret and carry out the constitutional amendment?

Imagine the effect upon a successful, long established charity—a great hospital—a great, well established society for relief, the Childrens' Aid Society—the Society for improving the condition of the poor, the Charity Organization Society—of subjecting it, with its knowledge, its experience and its success, to the judgment of individual members, officers and *inspectors* of the State Board of Charities; *whether its objects are being accomplished, whether the rules and regulations of the State Board in regard to it are being complied with*; whether its methods "of industrial, educational and moral training" are best adapted to the need of its inmates, and as to the "general conduct" of its officers and employees, and consider the possibility of providing by law that the attention of the officers of such a body shall be called to supposed defects or evils, and of providing that "such officers shall take steps with a view of correcting the same in accordance with the advice of the Board."

What competent, self-respecting trustees of any charity can long remain in control under such circumstances, and

what body of charitable men or women could submit to have such control exercised over their private benefactions in the private, unostentatious effort to benefit their fellow creatures? Again, how long will it be before these extraordinary powers of control shall be availed of by some political party, and before patronage becomes one of the objects to be reached by "supervision"?

Is it remarkable then that the charitable institutions of the State, receiving public funds, or dependent on private benefactors only, resent such interference and authority, and that the Courts have been called upon to interpret what charitable institutions fall within the supervision of this act?

In the late controversy between the State Board of Charities and the New York Society for the Prevention of Cruelty to Children, decided in the Court of Appeals, January 9, 1900, the Court considered the entire subject and decided distinctly that,

"The board was empowered to deal with charitable institutions not in the broad and general sense to which I have referred, but in the more limited and restricted sense in which these terms are used in the Constitution and the statute. The scheme of State supervision was not intended to apply to every institution engaged in good or commendable work for the relief of humanity from some of the various ills with which it is afflicted, but only to those maintained in whole or in part by the State or some of its political divisions through which charity as such was dispensed by public authority to those having a claim upon the generosity or bounty of the State. \* \* \* The power of visitation and regulation applies to those institutions administering charity of the former kind in whole or in part, but not to those voluntarily engaged in some good work of the latter character. They are left by the State to manage their own affairs in their own way, or at all events are not within the jurisdiction of the State Board of Charities."

The Chief Justice of the Court in a concurring opinion says:

"But the Courts should refuse by a strained and doubtful construction of the Constitution to fasten upon all engaged in work helpful in some way to others a regulating power that even the Legislature cannot relieve against should it after a time grow arrogant from a long use of power unrestrained by the Legislative and Executive Departments of the State Government."

The highest tribunal of the State has therefore in no uncertain tone refused to fasten upon private charities these enormous, and perhaps ridiculous, powers before adverted to as foreign to the Constitution, unwise, and not within the law.

Under these circumstances, while the State Board of Charities is applying for a reargument of the case, and before the Court has passed upon the application, the Board has introduced a bill No. 509 in the Senate and in the House, to bring all charitable corporations within its jurisdiction, to overrule the Court of Appeals, to subject all charitable corporations to these objectionable provisions, and to increase their own powers.

It is true the main purpose of the bill is to compel the successful litigant in the Court of Appeals to bow to its authority, but to effect this it is proposed to bring under its jurisdiction every corporation of charitable character or design—in fact, the very corporations which, in the language of the Court of Appeals, were clearly not within the meaning of the Constitution or the Statutes. The Court, in speaking of the contention of the State Board, said: Such a contention "would include all organizations of a religious or benevolent character—all educational institutions and all fraternal societies like the Masons and Odd Fellows, since they possess some feature that might be called charitable. It would include every society for the prevention of crime or for the promotion of temperance—the elevation of the condition of the Jews, or the colored people in the South, and even societies

"formed to mitigate the calamities of war and to promote peace."

Upon this bill a hearing was had before a joint committee of the Legislature on the 21st instant, and the State Charities Aid Association, while favoring a simple inspection of all charities, in a written memorandum expressed its opinion as follows:

"Second—We are, however, also clearly and strongly of the opinion that it is not good public policy for the State Board of Charities or any similar body to be vested with any power of regulation, control or management of private institutions or societies supported wholly by private donations. With regard to such institutions and societies we believe that the powers of the State Board of Charities should be limited to those of visitation and inspection, of securing annual reports, and, should abuses be discovered, of bringing them to the notice of the managers of the institutions or societies for the purpose of securing their correction, and, failing in this, of informing the public and the courts." And in view of this opinion the State Board offered in this particular bill to amend Section 10 only of the Charities act by striking out the word "supervision."

We respectfully suggest, however, that it is not in accordance with the dignity of the State, nor does it exhibit due respect to its judicial tribunals, that legislation should be hurriedly enacted to affect a particular charity pending a reargument of the questions lately considered by the Court; nor is it free from the appearance of oppression that all private charitable corporations should be unduly subjected to extreme authority, dangerous to their welfare, and injurious to our ideas of charitable freedom, or that new definitions of charitable societies shall be created by law to cover a particular case.

It will be an entirely unsatisfactory settlement of the question if such an act, even with the proposed amendment, be allowed to pass, and even if one section of the act be amended, provided if nothing is done to restrict the

powers hereinbefore mentioned as claimed by the State Board, and to save any such charity from such control, whether in the receipt of public funds or not, which is in organization and management not a State charity.

There is now before the Judiciary Committee of both Houses a bill, being the Statutory Revision bill, and covering these and kindred subjects. By definitely laying aside the bill of the State Board on which the hearing has been had, it is entirely possible to accomplish these results by amending this bill in the respects recommended by the State Charities Aid organization.

We respectfully suggest:

1. That any "supervision" over, or possibility of interference in the management of charitable institutions of the State not strictly known as State institutions be at once abolished, and that the legislation heretofore adverted to be made inapplicable to any other charitable societies or be entirely repealed.

2. That the inspection of any private charity shall be carefully restricted to examination merely, and that proper penalties be provided for any attempt of an inspector or any other person to interfere with its workings, or to attempt to procure patronage.

3. That the reports required of any private charity, whether in receipt of public moneys or otherwise, be limited to simple reports of receipts and disbursements and the points recommended by the State Charities Aid Association, including a statement of the number of inmates received and discharged.

4. That if at any time the State Board shall refuse to approve the organization of any proposed charitable institution, the reasons for such disapproval shall be given in writing, and the matter shall be subject to review by the Supreme Court.

We are absolutely convinced that a failure at this time to fully and calmly discuss and dispose of these questions



will result in continued dissatisfaction and will seriously interfere with the continued successful working of the charitable institutions of the State.

Very respectfully, your obedient servants,

MORRIS K. JESUP,  
MORGAN DIX,  
J. PIERPONT MORGAN,  
CHAS. STEWART SMITH,  
A. E. ORR.  
JACOB H. SCHIFF.

FEBRUARY 28th, 1900.

MESSRS. MORRIS K. JESUP and others,  
No. 44 Pine St., N. Y. City.

GENTLEMEN:

I thank you cordially for your courteous letter of the 26th inst. I shall at once call for an exhaustive report from the State Board of Charities on what you allege.

Without regard to the personnel of the State Board of Charities, or the way they have construed their duties, I desire to say that it is in my judgment most emphatically necessary that there should be a right of inspection and report by the proper State body—which, of course, must be the State Board of Charities, and cannot properly mean anything else—over all charitable institutions. I feel that on this point the attitude taken by the State Charities Aid Association, as appears in their recent public paper and argument before the legislative committee, is eminently wise and proper. But the very fact that there should be this right of inspection and report makes it all the more necessary that the right should be wisely and tactfully exercised; that there should be nothing offensive or dictatorial in the way the work is done, and no improper interference with the work of the different charitable institutions.

With great regard,

Very truly yours,  
THEODORE ROOSEVELT.

44 PINE ST., NEW YORK.  
March 1, 1900.

HON. THEODORE ROOSEVELT,  
Governor of the State of New York.

My dear Governor ROOSEVELT:

I wish to acknowledge the receipt of your courteous favor of February 28th, and, in reply, to write you fully of the situation both as it actually exists here and as it outlines itself to my mind. In writing this letter I am confident that I express the views held by all of the signers of the earlier letter to you, but I am not authorized to speak for Mr. Gerry of whose attitude I am not as yet fully advised.

The charities of this State may properly be divided into three classes:

FIRST.—The distinctively public charities controlled by public officers and wholly maintained by the State or its political subdivisions;

SECOND.—Private charities which receive some public assistance, and

THIRD.—Private charities which receive no public assistance.

As the Constitution and the Charities Act of 1896 have recently been construed by the Court of Appeals in the Gerry case, the State Board of Charities has exceedingly broad powers of "supervision" and "control" over the first two classes of charities, but the last class is placed entirely outside of the field of its jurisdiction.

I apprehend that there will be no difference of opinion among reasonable men that so far as the first class of charities is involved, the State Board should retain most, if not all, of the powers which it now possesses, and, so far as my associates and I are concerned, we most readily concede the wisdom of your opinion that all charities of the second and third classes should be subject to such "inspection" by the Board, as will show, in the case of chari-

ties of the second class, that the public funds are not misappropriated, and in the second and third classes, that their inmates are not maltreated.

But the trouble with the law as it will stand if the Fish bill be enacted—even though the State Charities Aid Amendment is inserted—is that broad powers of “supervision and control” over charities of the second and third classes will be vested in the State Board.

Speaking as I do for a group of men who have done much for the charities of the State, I can assure you that we will cheerfully submit our trustees to a properly guarded inspection. Such an inspection will protect them just as the examination by a bank examiner affords some protection to the directors of a bank. But we will not submit that the supervision and control of our gifts shall be wrested from those whom we shall select as our almoners, or that their honest discretion, upon which we rely, shall be in any way interfered with. And I do not hesitate to add that unless the present law, which gives exceedingly broad powers of control to the State Board shall be modified, it will divert from the charities of this State great sums of money which they would otherwise receive.

This attitude is not attributable, I may add, to any mistrust of the gentlemen who now compose the State Board. For, although a very serious friction now exists between ourselves and them, and although we believe that some of them are over-officious and have exceeded their powers, we entertain no doubt whatever of their honesty of purpose and purity of motive. But we have not selected them to administer our gifts, and we are exceedingly solicitous lest the great powers of a Board, now concededly honest, may hereafter be devolved upon those who from unworthy motives may use such powers to the detriment of the charities which we represent.

Holding the views thus indicated, the gentlemen for whom I speak have appointed Messrs. John L. Cadwalader, Lewis L. Delafield and myself as a committee to see what can be done about the situation, and as the result of numerous conferences, we have made the follow-

ing informal arrangement with Mr. Stewart of the State Board:

1. That pending further conference he will maintain the *status quo* so far as the pending bills are concerned.
2. That a conference shall be held in the end of the week between representatives of the State Board, of the State Charities Aid Association and ourselves, with a view to making an honest effort to agree upon a revision of the Charities Act of 1896, upon the following general lines upon which we all agree, in principle, namely:

FIRST.—That the present powers of the State Board over public charities shall be continued.

SECOND.—That as respects private charities receiving public aid, the powers of the State Board shall be restricted to “inspection,” due recognition being accorded to the right conferred upon that Board by the Constitution to make rules for the reception and detention of inmates whose support is paid for by public moneys.

THIRD.—That the State Board be given a carefully limited power “to inspect” private institutions receiving no public aid; and

FOURTH.—That an appeal to the Courts be given in any case where the State Board refuses to approve the certificate of incorporation of a new charity.

As to these general principles, there is no difference, as I have said, between the State Board and ourselves, and from what I am told by Messrs. Cadwalader and Delafield about conferences which they have had with Messrs. Stewart and Philbin, I am encouraged to hope that we may be able to accomplish the difficult task of adjusting the details. Certainly we, on our part, are anxious to deal with the matter in the most open-minded way, and

my only fear is that some desire to retain a dangerous authority may lead the State Board to meet us in a less conciliatory spirit. Perhaps the desire that I am sure you must feel to adjust these unfortunate differences may lead you to act as a mediator should any breaking off of the negotiations seem imminent.

I am advised that any satisfactory adjustment will probably involve a general revision of the Act of 1896, and a tentative revision is now in course of preparation. Should we agree upon a bill, the lateness of the day may perhaps compel us to ask your official assistance in expediting it. Should we fail to agree, I cannot hide from you my earnest conviction that it will lead to a contest between the State Board and ourselves both in the Legislature and in the courts which cannot fail to be harmful to both, and which, in my view, would be most deplorable from every standpoint.

Yours very truly,

MORRIS K. JESUP.

NEW YORK, March 8, 1900.

MORRIS K. JESUP, Esq., REV. MORGAN DIX, S. T. D., J. PIERPONT MORGAN, Esq., CHARLES STEWART SMITH, Esq., ALEXANDER E. ORR, Esq., and JACOB H. SCHIFF, Esq.

DEAR SIRs:

In your communication to the Governor of the State, under date of February 26, 1900, you pointed out at length the objectionable features of the present law defining the powers of the State Charities Board, the mistake in granting such powers over private charities as are claimed to be possessed by the State Board, and you defined what, in your judgment, was the limit of power which in any case ought to be given over private charities, whether

in receipt of State funds or otherwise, and suggested what amendments should be made to the act in these respects.

About the time of your communication to the Governor, the State Charities Board expressed to us the opinion that there ought to be no difficulty in meeting the views of fair minded people upon this general subject, and also that many of the powers conferred upon the Board by the Act of 1896, with reference to private charities, were not desired by the Board, and, in fact, that it was hardly possible to exercise them; and the Board expressed a desire for a conference on these lines, to see whether some general understanding could not be reached. Subsequently, at several conferences, we discussed the entire subject, and finally were requested by the representative of the State Board of Charities to prepare a revision of the Act of 1896 affecting private charities which, in our judgment, would be acceptable to the persons representing the large New York charities and which, at the same time, would give the State Board sufficient power to perform its duty in regard to private institutions.

In your letter to the Governor you expressed the opinion, *first*, that any supervision over or possibility of interference in the management of the charitable institutions of the State not strictly known as State institutions, should be at once abolished; *second*, that the inspection of any private charity should be carefully restricted to examination merely, and that proper penalties be provided for any attempt of an inspector or other person to interfere with the working of the charity or for an attempt to procure patronage; *third*, that the reports required of any private charity, whether in receipt of public moneys or otherwise, be limited to simple reports of receipts and disbursements, and to certain points adverted to by the State Charities Aid Association in a report recently made by them, including a statement of the receipt and discharge of inmates; *fourth*, that if at any time the State Board shall refuse to approve the organization of a proposed charity, the reason for the disapproval shall be

given in writing, and the matter shall be subject to review by the Supreme Court.

These were the points which, in your judgment, it was necessary to cover, and which have been carefully kept in mind in preparing a revision of the act. The main contention of those interested in large charities has been that the act of 1896 bestowed objectionable powers of control and management upon the State Board of Charities over private charitable institutions, and that no power of supervision or interference in the management of any private charity should exist, as tending to discourage individual charitable effort and charitable donations, and because it was not only unwise, but impossible for the State Board of Charities to supervise or assume to manage such individual charities. It requires no argument to show that the charitable people of this City, men and women who have successfully managed large private charities, both those receiving public funds and those with sufficient endowments, or dependent on private benefactions, could not and would not divide their general management with the State Board or any other body, and could not and would not subject themselves to the interference, direction or control of inspectors or similar officials of the State Board.

It is plain that the powers now or lately existing to direct and supervise private charities are too great, and should be taken away. It is fair, however, to say that the State Board disclaim any intention to use these broad powers; but, nevertheless, they possess them, and from time to time have used them, and probably in some cases have gone beyond the provisions of law.

At the same time, if, in the desire to free private charities from unwise or irksome restraints of this character, you shall take away *all inspection* and all power to inquire into the physical condition of a charity, then it is equally evident that abuses must spring up and that undesirable or fraudulent institutions will be established under the guise of charity, over which no control whatever will exist. Persons largely engaged in charitable work, of all

shades of opinion, therefore, seem to be of the opinion that for the general good the large and well managed charitable institutions ought to submit to reasonable inspection, in order that similar rules may apply to institutions of a different character, both to those which may not be honest in their management and purposes, and those which are well intentioned but incompetently conducted.

We have, therefore, insisted that all "supervision" as such over private charities, should be abolished, and that "inspection"—very carefully defined—shall be substituted, which shall apply alike to all charitable institutions, whether in receipt of public funds or otherwise, the latter class having been excepted from the jurisdiction of the State Board of Charities under the recent decision in the case of the State Board against the Society for the Prevention of Cruelty to Children.

It seems, moreover, reasonably plain, where an institution is in receipt of public moneys, that the State Board as the appropriate public body shall have the right of reasonable examination into the manner in which such moneys have been expended; and, in fact, some such examination will be required from time to time to obtain grants or public funds. The State Board suggested that if it failed to possess over all private charities the general right of examination into the books, accounts and affairs of these institutions, harm would result, and explained that in many cases its inspectors had been of decided advantage in discovering errors or irregularities. While we believe that such irregularities have been discovered, we were not willing to open the door, without reason in each case, to unlimited examination by these inspectors into the accounts and books of any private institution whether in receipt of public moneys or otherwise, but prefer to leave such matters as a duty resting on its own managers. If such private institutions desire an examination by the State Board, and the managers of any well conducted institution will ask an expert examination from time to time into the accounts and books, if they are wise they can ask for it, and it can

be economically done. With this general limitation, however, it is also reasonable where as to any particular charity the State Board shall have sufficient evidence of actual wrongdoing, or the necessity of an examination into its books or accounts, that it shall be enabled to procure an order from the Court directing an examination into particular matters or in general.

On these lines, therefore, we have drawn a revision of the Act of 1896 affecting private charities, whether in receipt of State moneys or otherwise, and we have substantially provided as follows:

FIRST.—That in addition to the visitation, inspection or supervision by the State Board of Charities over State institutions, expressly as such, there shall be the right to visit and inspect any charitable, eleemosynary, correctional or reformatory institution, for the following purposes: (1) To examine into the condition of the grounds, buildings and other establishments of the institution, and the measures adopted for the protection and preservation of the health of the inmates; (2) To examine into the physical condition of the inmates, as to their treatment, and as to the arrangements existing as to their sustenance, clothing, care and support; (3). If the institution shall be in receipt of moneys from any county, city, town or village for the care and support of the inmates, the Board shall have the further right to examine into the manner and propriety of the expenditure of such public moneys, to examine the books of account, papers and vouchers of the institution to that extent, and for such purpose, *and not otherwise*, and also the right to ascertain whether the rules or provisions of law with reference to the reception and detention of inmates for whose care, support and maintenance payments are made by any city, county, town or village, are properly observed; (4) In case any evils or abuses

shall be found as the result of such examination, that the State Board shall call the attention of the Trustees, Directors or Managers of such institution to the same, in order that they may take proper action in reference thereto; and in case they shall fail to do so, the State Board may in case it finds further proceedings necessary, call the matter to the attention of the Supreme Court; (5) In any case where the facts seem to justify it, the State Board may apply to the Supreme Court and obtain an order directing an examination of the books and accounts of any charity, or an examination into the general affairs of the institution, and an examination may be had as far as permitted by the order; (6) Except as herein specifically provided, that the State Board shall possess no power of investigation, supervision or inspection over any institution wholly or partly under private control; nor shall the Board, its officers, members or inspectors interfere in the conduct or management thereof, or assume to supervise, or exercise any control or direction over the same.

This, in our judgment, leaves the matter where it ought to be, subjects private charities to inspection, and inspection clearly defined, compels the State Board to bring any so-called abuse to the notice of the officials of a private charity, and, in case the matter be important and they decline to act, to bring the subject before the courts, and entirely does away with the idea that the State Board of Charities may of its own volition make an order which must be obeyed by a private charity as to the correction of so-called abuses, or the conduct of the charity. The amendment proposed also provides that whenever the State Board shall disapprove the formation of a new charity, their reasons shall be given therefor, that the matter may be subject to review in the Supreme Court.

With reference to the character of the report which is now required to be made by private charities, it seemed almost impossible to assume to define with accuracy all

the points on which a report could be demanded, and as the representative of the State Board assured us that the Board agreed with the criticisms which had been made as to the elaborate character of the reports demanded from private charities, and that steps would be taken to simplify the same, we have contented ourselves with their assurance.

In preparing this revision and in the conferences on the subject, we have acted in concert with the State Charities Aid Association, and are assured by the President of that Association that he is entirely satisfied with the revision which is the result of our labors.

The revision referred to does not affect the Society for the Prevention of Cruelty to Children.

We are of opinion that your intervention, the good sense displayed by the State Board, and their willingness to meet our efforts in putting the law as to private charities on a simple and satisfactory footing, ought to do away with a large part of the opposition which has arisen to the enforcement of the law of 1896 by the State Board of Charities; and if the State Board will, in the exercise of similar judgment, invite the public to make complaint of any case of arbitrary or improper treatment, if such shall occur, by the officials or inspectors in carrying out the law, and will make an effort to take the charitable public and managers into their confidence and have them understand that it is the desire of the State Board to act in concert with them and avoid the appearance of being in opposition, and if on the other hand the private charities can be brought to see the situation as it will exist with the proposed revision,—there is no reason whatever why affairs should not be placed upon a much more satisfactory footing.

The condition of things which has grown up has arisen in part because, after the passage of the Constitutional amendment creating the State Board of Charities, no attention whatever was given by any one having the subject in hand to the legislation which was enacted to carry out the amendment or to the powers conferred upon the State

Board, and because the State Board has been unfortunate in not getting into sympathy with the managers of the charitable institutions of the State. If the revision of the Act of 1896 which we have prepared shall be enacted, an entirely new situation will be created, in which, as we hope, all occasion for the friction which has heretofore existed between the State Board on the one hand and the private charities on the other with reference to inspection or supervision, will be found to be removed.

Although some of these private charities, such as the hospitals, are also largely interested in the matter of the jurisdiction of the State Board over Dispensaries under the Act of 1899, and although the act is in many features quite as objectionable as the act of 1896, and while it will be, to say the least, most difficult to carry on any dispensary under the Dispensary law and the rules of the State Board as now existing in reference thereto, we have avoided any reference to the subject as not before us. It is quite plain, however, that the bill of the Statutory Revisers in reference to the State Board of Charities now before the Judiciary Committee of both houses, including this subject, should not become law during the present session.

Respectfully yours,

JOHN L. CADWALADER,  
LEWIS L. DELAFIELD.

We enclose a copy of the bill prepared by us and above referred to.

AN ACT TO AMEND CHAPTER FIVE HUNDRED AND FORTY-SIX OF THE LAWS OF EIGHTEEN HUNDRED AND NINETY-SIX, ENTITLED "AN ACT RELATING TO STATE CHARITIES, CONSTITUTING CHAPTER TWENTY-SIX OF THE GENERAL LAWS."

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Section two of chapter five hundred and forty-six of the laws of eighteen hundred and ninety-six is hereby amended so as to read as follows:

§ 2. DEFINITIONS.—The term state charitable institutions, when used in this chapter, shall include all institutions of a charitable, eleemosynary, correctional or reformatory character, supported in whole or in part by the state, except institutions for the instruction of the deaf and dumb and the blind, and such institutions which, by section eleven, article eight of the constitution, are made subject to the visitation and inspection of the commission in lunacy or the prison commission, whether managed or controlled by the state or by private corporations, societies or associations. The term municipal institution when used herein shall include all institutions of the character above described which are wholly controlled and managed by public officers and are wholly supported by payments from counties, cities, towns or villages.

§ 2. Section nine of said act is hereby amended so as to read as follows:

§ 9. GENERAL POWERS AND DUTIES OF BOARD AS TO STATE AND MUNICIPAL INSTITUTIONS.—The state board of charities shall visit, inspect and maintain a general supervision of all state and municipal institutions, societies or associations which are of a charitable, eleemosynary, correctional or reformatory character, incorporated or not incorporated, which are made subject to its supervision by the constitution or by law; and shall,

1. Aid in securing the just, humane and economic administration of all institutions subject to its supervision.

2. Advise the officers of such institutions in the performance of their official duties.

3. Aid in securing the erection of suitable buildings for the accommodation of the inmates of such institutions aforesaid.

4. Investigate the management of all state and municipal institutions made subject to the supervision of the board, and the conduct and efficiency of the officers or persons charged with their management, and the care and relief of the inmates of such institutions therein or in transit.

5. Aid in securing the best sanitary condition of the buildings and grounds of all such institutions, and advise measures for the protection and preservation of the health of the inmates.

6. Aid in securing the establishment and maintenance of such industrial, educational and moral training in institutions having the care of children as is best suited to the needs of the inmates.

7. Investigate the condition of the poor seeking public aid and advise measures for their relief.

8. Administer the laws providing for the care, support and removal of state and alien poor and the support of Indian poor persons.

9. Collect statistical information in respect to the property, receipts and expenditures of all institutions, societies and associations subject to its supervision, and the number and condition of the inmates thereof, and of the poor receiving public relief.

10. Approve or reject plans and specifications for new buildings for any state institution subject to its supervision, and also for unusual repairs or improvements to existing buildings of such institutions; and no such buildings shall be erected, or such repairs or improvements made, until the plans and specifications therefor have been approved by the state board.

§ 3. Section 10 of said act is hereby amended so as to read as follows:

§ 10. VISITATION, INSPECTION AND SUPERVISION OF STATE AND MUNICIPAL INSTITUTIONS.—All state and municipal institutions of a charitable, eleemosynary, reformatory or correctional character or design, including reformatories (except those now under the supervision and subject to the inspection of the prison commission), but including all reformatories, except those in which adult males convicted of felony, shall be confined, asylums and institutions for idiots and epileptics, almshouses, orphan asylums, and all asylums, hospitals and institutions, except institutions for the custody, care and treatment of the insane, are subject to the visitation, inspection and supervision of the state board of charities, its members, officers and inspectors. Such institutions may be visited and inspected by such board, or any member, officer or inspector duly appointed by it for that purpose, at any and all times.

Such board or any member thereof may take proofs and hear testimony relating to any matter before it, or before such member, upon any such visit or inspection.

Any member or officer of such board, or inspector duly appointed by it, shall have full access to the grounds, buildings, books and papers relating to any such institution, and may require from the officers and persons in charge thereof, any information he may deem necessary in the discharge of his duties. The board may prepare regulations according to which, and provide blanks and forms upon which, such information shall be furnished, in a clear, uniform and prompt manner, for the use of the board. No such officer or inspector shall divulge or communicate to any person without the knowledge and consent of said board any facts or information obtained pursuant to the provisions of this act; on proof of such divulgement or communication such officer or inspector may at once be removed from office. The annual reports of each year shall

give the results of such inquiries, with the opinion and conclusions of the board relating to the same. Any officer, superintendent or employee of any such institution, society or association who shall unlawfully refuse to admit any member, officer or inspector of the board, for the purpose of visitation and inspection, or who shall refuse or neglect to furnish the information required by the board or any of its members, officers or inspectors, shall be guilty of a misdemeanor, and subject to a fine of one hundred dollars for each such refusal or neglect. The right and powers hereby conferred may be enforced by an order of the supreme court after notice and hearing, or by indictment by the grand jury of the county or both.

§ 4. Section eleven of said act is hereby amended so as to read as follows:

§ 11. POWERS AND DUTIES OF BOARD ON VISITS TO, AND INSPECTIONS OF, STATE AND MUNICIPAL INSTITUTIONS.—On visits to, and inspections of, state and municipal institutions, inquiry shall be made to ascertain: (first) Whether all parts of the state are equally benefited by the institutions requiring state aid; (second) the merits of any and all requests on the part of any such institution for state aid, for any purpose, other than the usual expenses thereof; and the amount required to accomplish the object desired; (third) the sources of public moneys received for the benefit of such institution, as to the proper and economical expenditure of such moneys and the condition of the finances generally; (fourth) whether the objects of the institution are being accomplished; (fifth) whether the laws and the rules and regulations of this board, in relation to it, are fully complied with; (sixth) its methods of industrial, educational and moral training, if any, and whether the same are best adapted to the needs of its inmates; (seventh) the methods of government and discipline of its inmates; (eighth) the qualifications and general conduct of its officers and employees; (ninth) the



condition of its grounds, buildings and other property; (tenth) any other matter connected with or pertaining to its usefulness and good management.

§ 5. Section twelve of said act is hereby amended so as to read as follows:

§ 12. INVESTIGATIONS OF STATE AND MUNICIPAL INSTITUTIONS. - The board may direct an investigation, by a committee of one or more of its members, of the affairs and management of any state or municipal institution, society or association, subject to its supervision, or of the conduct of its officers and employees. The commissioner or commissioners designated to make such investigation are hereby empowered to issue compulsory process for the attendance of witnesses and the production of papers, to administer oaths, and to examine persons under oath, and to exercise the same powers in respect to such proceeding as belong to referees appointed by the supreme court.

If it shall appear, after such investigation, that inmates of the institution are cruelly, negligently or improperly treated, or inadequate provision is made for their sustenance, clothing, care, supervision, or other condition necessary to their comfort and well being, said board may issue an order, in the name of the people, and under its official seal, directed to the proper officers or managers of such institution, requiring them to modify such treatment or apply such remedy, or both, as shall therein be specified; before such order is issued, it must be approved by a justice of the supreme court, after such notice as he may prescribe and an opportunity to be heard, and any person to whom such an order is directed who shall willfully refuse to obey the same, shall, upon conviction, be adjudged guilty of a misdemeanor.

§ 6. Section thirteen of said act is hereby amended so as to read as follows:

§ 13. CORRECTION OF EVILS IN ADMINISTRATION OF STATE AND MUNICIPAL INSTITUTIONS. - The state board of chari-

ties shall call the attention of the trustees, directors or managers, or public officers having control, of any such institution, society or association, subject to its supervision, to any abuses, defects or evils which may be found therein, and such officers shall take proper action thereon, with a view to correcting the same, in accordance with the advice of such board.

§ 7. Section fourteen of said act is hereby amended so as to read as follows:

§ 14. POWERS AS TO INSTITUTIONS, OTHER THAN STATE OR MUNICIPAL. - In addition to the visitation, inspection and supervision hereinbefore provided for as to state and municipal charitable institutions, the state board of charities shall visit and inspect all institutions of a charitable, eleemosynary, reformatory or correctional character or design, including reformatories (except those now under the supervision and subject to the inspection of the prison commission), but including all reformatories, except those in which adult males convicted of felony shall be confined, asylums and institutions for idiots and epileptics, almshouses, orphan asylums, and all asylums, hospitals and institutions of a charitable, eleemosynary, correctional or reformatory character as aforesaid, whether incorporated or not incorporated, and whether supported wholly or in part by private donations, or by payments from any county, city, town or village, private or otherwise, except institutions for the custody, care and treatment of the insane. Such institutions may be so inspected by such board, or any member, officer or inspector duly appointed by it for that purpose, at any and all times for the following purposes: (1) To examine into the condition of the grounds, buildings and other establishments of the institutions, and the measures adopted for the protection and preservation of the health of the inmates; (2) to examine into the physical condition of the inmates, as to their treatment, and as to the arrangements existing for their sustenance, clothing, care and

support; (3) with reference to any institution in receipt of any moneys from any county, city, town or village for the care, support and maintenance of the inmates thereof the board shall have the further right to examine into the manner and propriety of the expenditure of such moneys, and to examine the books of account, vouchers and papers of the institution to that extent and for such purposes, and not otherwise, and to ascertain whether all lawful rules or provisions of law with reference to the reception and retention of inmates for whose care, support and maintenance payments are made by any city, county, town or village, are properly observed.

4. The state board of charities shall call the attention of the trustees, directors or managers of any institution, society or association of the character above specified, to any abuses, defects or evils which have been found as the result of any inspection authorized hereby, in order that such officers may consider and take proper action thereon, and in case of failure so to do, the said Board may report the same to the supreme court.

5. Any justice of the supreme court shall upon application of the said board, make an order authorizing the said board or a committee of one or more of its members, to make an investigation into the affairs or management of any such institution, and to examine its books, papers and accounts either generally or to the extent and for the purposes specified in the said order; and thereupon the said board or such committee thereof shall have power to make such investigation, and to issue compulsory process to compel the attendance of witnesses and the production of books, papers, accounts and vouchers, and to administer oaths, examine witnesses, and to exercise all powers in respect to such proceedings as belong to referees appointed by the supreme court. The said order authorizing such investigation may be made *ex parte*, but a copy thereof and of the papers upon which it was granted must be served upon the institution to be examined or upon some one of the officers, managers, trustees or employees

thereof at or before the time of the commencement of the investigation thereby authorized.

6. If as the result of any visit, inspection or investigation, the said board shall be of the opinion that any inmate of any institution is cruelly, negligently or improperly treated, or that inadequate provision is made for his sustenance, clothing, care or supervision, and the said institution after notice thereof, as provided in sub-division four of this section, shall have failed to change or modify such treatment as the circumstances require, the said board may apply at any special term of the supreme court, upon such notice to such institution as to the court shall seem sufficient, for an order directing that the treatment of such inmate be changed or modified as the circumstances of the case may require. The court shall thereupon make such an order in the premises as the circumstances of the case may require, and any institution or individual who shall fail forthwith to comply with the terms thereof shall be guilty of contempt. An appeal from such order shall not operate as a stay.

7. Any member or officer of such board, or inspector duly appointed by it, shall have full access to the grounds and buildings, and to the books and papers, of any such institution, within the limits hereinbefore provided, and may require from the officers and persons in charge thereof any information necessary in the discharge of his duties.

8. No such officer or inspector shall divulge or communicate to any person without the knowledge and consent of said board any facts or information obtained pursuant to the provisions of this act; and on proof of such divulgement or communication such officer or inspector may at once be removed from office.

9. The said board shall have power to make reasonable rules and regulations requiring institutions receiving payments from the state or from counties, cities, towns or villages for the care, support and maintenance of any of their inmates, to make reports, not more frequently than once in each month, concerning such inmates.

10. The said board shall also have power to establish rules for the reception and retention of inmates in all institutions for whose care, support or maintenance payments are made by any county, city, town or village.

11. The said board shall also approve or disapprove the organization and incorporation of all institutions of a charitable, eleemosynary, correctional or reformatory character which are or shall be subject to its visits or inspection. Provided, however, that in all cases the board shall state in writing its reasons for such approval or disapproval, and that in any case in which it shall disapprove such organization or incorporation, its action shall be subject to review, upon notice to said board, by the supreme court. If upon application to such court it shall appear to the satisfaction of such court from the evidence produced that such organization or incorporation ought to be approved, it may, by its order, approve the same, and such order, so approving the same, shall be taken in lieu of such approval by the said board.

12. Except as herein specifically provided the said board shall possess no power of visitation, supervision or inspection over any institution wholly or partly under private control; nor shall such board, its officers, members or inspectors, or any of them, interfere in the conduct or management thereof, or assume to supervise or to exercise any control or direction over the same.

§ 8. Section seventeen of said act is hereby amended so as to read as follows:

§ 17. REPORTS OF STATE BOARD OF CHARITIES.—The state board of charities shall annually report to the legislature its acts, proceedings and conclusions for the preceding year, with results and recommendations, which report shall include the information obtained in its inquiries and investigations, and from the reports made to it as in this chapter provided, giving a complete and itemized statement of expenditures for state poor, and of such other matters relating to the institutions subject to its visitations or inspections as it may deem necessary or

proper. The board shall collect, and so far as it shall deem advantageous, embody in its annual reports, such information as it may deem proper relating to all institutions subject to the visitation or inspection of the board and respecting the best manner of dealing with those who require assistance from the public funds, or who receive aid from private charity, and represent its views as to the best methods of caring for the poor and destitute children who may be distributed through the various institutions of the state, or who may be without instruction or guidance, and furnish in tabulated statements, as nearly as possible, the number, sex, age and nativity of persons in this state, and in the several counties thereof, who are in any way receiving the aid of public, private or organized charity, with any other particulars it may deem proper. And all officers of such institutions shall furnish such statistics on or before the first day of November, in each and every year for the preceding fiscal year, as may be required by said board; and every person refusing to do so, in violation of this section without reasonable excuse, shall be subject to a penalty of one hundred dollars, to be sued for in the name of the people by the attorney-general of the state, upon his receiving written notice from the state board of charities of such refusal. The annual reports of the board may, in its discretion, present the designs and plans and the general estimate for buildings and improvements, which it may deem necessary for any state charitable institution, with the opinion of the board respecting any appropriation required as asked in behalf of such institution, other than for maintenance, or ordinary purposes. The board may, in its discretion, and shall, when required by the governor, or either house of the legislature, make other and special reports.

§ 9. Section eighteen of said act is hereby amended so as to read as follows:

§ 18. INSTITUTIONS FOR THE DEAF AND DUMB AND THE BLIND.—Institutions for the deaf and dumb and the blind

shall be subject to such visits and inspection by the state board of charities as by the constitution and herein is provided, but nothing in this article shall be deemed to take from the comptroller of the state any power which he now has to audit and supervise the expenditures made on account of the institutions for deaf mutes and for the blind.

§ 10. The said act is further amended by adding after section twenty-five thereof the following additional section:

§ 26. Nothing in this act contained shall be construed as affecting any mutual benefit or fraternal society or organization.

§ 11. This act shall take effect immediately.

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**END OF  
TITLE**